

**REMARKS**

Claims 1-12 were pending. Claims 5 and 11 have been presently cancelled, and claim 13 was previously cancelled. Claim 14 has been added. Thus, following this amendment, Claims 1-4, 6-10, 12, and 14 are currently pending.

Claims 2-4, 6-10, and 12 have been amended to place the claims in proper U.S. format and to correct typographical errors. Claims 4 and 10 have also been amended to delete the recitation of the fifth group of herbs. In addition, claims 6 and 12 have been amended to depend from currently pending claims, rather than cancelled claims. No new matter has been added by way of the claim amendments.

**Restriction Requirement**

The Examiner has required the election of a single species from the following groups:

claim 4: first group, second group, third group, fourth group, fifth group; and  
claim 6.

The Examiner asserts that the application contains claims directed to more than one species of the generic invention. The Examiner alleges that these species lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The Examiner also alleges that because herbs in varying combinations are known to be used to treat allergic reactions, no corresponding technical feature is present in all combinations of herbs for the treatment of allergic or inflammatory response.

Applicant respectfully traverses. In accordance with PCT Rule 13.2, where a group of inventions is claimed in one and the same application, the requirement of unity of invention

referred to in 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Applicant asserts that the presently claimed compositions comprising combinations of herbs share the same special technical feature of prophylactic or therapeutic effectiveness when used to prevent or treat allergic or inflammatory responses. Although herbs in varying combinations are known to be used to treat allergic reactions, there are many combinations of herbs that have little or no effect. As noted in the specification, very few herbal formulations have been subjected to properly controlled studies to demonstrate therapeutic effectiveness in the treatment of respiratory disorders. (See specification, page 3, lines 5-7). Not only are the presently claimed combinations of herbs novel and inventive, but subjects administered with these combinations demonstrate significant improvement relative to subjects receiving the placebo control. (See specification, page 24, line 7 to page 28, line 1). Thus, in contrast to most herbal formulations in the prior art, the herbal combinations of the present invention are actually therapeutically effective for allergy or inflammatory disorders, such as allergic rhinitis.

Accordingly, Applicant asserts that the combinations of herbs are linked so as to form the single, general inventive concept of therapeutic effectiveness in the treatment of allergic or inflammatory responses and, therefore, do not lack unity of invention. As such, Applicant respectfully submits that the election of species is not required.

To be fully responsive to the election requirement, Applicant provisionally elects the following herbs of groups 1-4 from claim 4 for examination:

First group: Yinxingye

Second group: Huangqi

Third group: Yinyanghuo

Fourth group: Huangqin and Wuweizi.

Since the subject matter of the fifth group has been deleted from Claims 4 and 10, Applicant does not elect a species for the fifth group.

Applicant respectfully requests that Huangqin and Wuweizi be examined within the fourth group. Since the subject matter of the fifth group has been deleted, there is no added burden on the Examiner to examine two species from the fourth group. Should the Examiner not agree to the Applicant's election within the fourth group, however, Applicant provisionally elects, with traverse, Huangpin for the fourth group. Claims 1-3 and 7-9 are generic and readable on the elected species. Claims 10, 12 and 14 are also readable on the elected species.

For claim 6, Applicant elects the following five herbs: the root of *Scutellaria Baicalenis Georgi*, Huangqin; the leaf of *Ginkgo biloba*, Yinxingye, the leaf of *Epimedium Sagittatum*, Yinyanghuo, the fruit of *Schisandra Chinesis Baill*, Wuweizi; and the root of *Astragalus Membranaceus*, Huangqi. Claims 1-3, and 7-9 are generic and readable on the elected species. Claims 10, 12 and 14 are also readable on the elected species.



A34641-PCT-USA (071838.0130)  
PATENT

**CONCLUSION**

On the basis of the foregoing remarks, Applicant requests reconsideration and withdrawal of the requirement for the election of species under PCT Rule 13.1. Applicant respectfully submits that the claims 1-4, 6-10, 12, and 14 are ready for examination and in condition for allowance.

Applicant does not believe that any fee, other than an extension of time fee, is required in connection with this submission. However, should any other fee be required, the Commissioner is hereby authorized to charge any such fee to Deposit Account 02-4377. A duplicate copy of this paper is enclosed.

Respectfully submitted,  
BAKER BOTTS LLP

Rochelle K. Seide  
Patent Office Reg. No. 32,300

Peter J. Shen  
Patent Office Reg. No. 52,217

Attorneys for Applicant  
(212) 408-2500

30 Rockefeller Plaza  
New York, NY 10112-4498

RECEIVED  
SEP 23 2003  
TECH CENTER 1600/2300